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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,692	07/13/2001	Raymond Francis Jakubowicz	961_002	4749
20874	7590	04/14/2006	EXAMINER	
WALL MARJAMA & BILINSKI 101 SOUTH SALINA STREET SUITE 400 SYRACUSE, NY 13202			ALEXANDER, LYLE	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/904,692

Applicant(s)

JAKUBOWICZ ET AL.

Examiner

Lyle A. Alexander

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,6-22,56-59 and 62-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3,6-22, 56-59 and 62-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3,6-22, 56-59 and 62-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller, Muszak et al. or Carey et al. in view of Hamilton et al. (USP 4,568,519)

See the appropriate paragraph of the 10/05/05 Office action.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3,6-22, 56-59 and 62-71 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Jakubowicz et al. (USP 5,244,633).

Jakubowicz et al. teach an incubator using two independently driven concentric rings that have been read on the claimed "inner" and "outer" rings. The original specification of the instant application teaches of page 7 lines 8+ "... the term "element" ... refers to ... any form of sample container". The claimed "slide elements" have been read on the taught --cuvettes--. Claim 1 stated the two rings are in a common plane, independently rotated and that sample cuvettes are moved between the rings without coming out of the common horizontal plane.

Response to Arguments

Applicant's arguments filed 2/6/06 have been fully considered but they are not persuasive.

Applicants' Miller and Muzak et al. fail to teach concentric inner and outer ring rotors that remain in a common horizontal plane during all stages of the of operation. The instant claim language does not require the rotors to be in the same plane during all stages of operation. Applicants' may considered additional amendments specifying the rotors are "always", "only" or "exclusively" in a common horizontal plane.

Applicants' state Miller and Muzak et al. do not teach movement of the slide "exclusively along a common horizontal plane". These two references were cited in combination with Hamilton et al. to teach this feature.

Applicants' state Carey et al. and Jakubowicz et al. are not relevant because they are directed to movement of "cuvettes" rather than "slide elements". The original specification of the instant application teaches of page 7 lines 8+ "... the term "element" ... refers to ... any form of sample container". The claimed "slide elements" have been properly read on the cuvettes taught by Carey et al. and Jakubowicz et al. Applicants' may consider better defining the claimed "slide elements" to define over these references.

Applicants' state Jakubowicz et al. fail to teach loading of the cuvettes into the inner ring. The pending limitations do not exclude the movement of a sample from the outer ring to the inner ring which read on the instant claims. The pending claims do not specify loading of the inner ring from somewhere other than the outer ring. Rather, the

Art Unit: 1743

claims are directed to relative movement between the rings which is met by Jakubowicz et al.

Applicants' state Jakubowicz et al. fails to teach the at least one second drive mechanism including at least one reciprocating pusher blade assembly for loading slide elements into said inner ring and for moving slide elements between said inner ring and said outer ring. This language does not distinguish over the relative movement taught by Jakubowicz et al.

Applicants' state claims 62-63 have been specifically amended describing the pusher blade assembly enabling radial movement either into and/or out of the incubator, as well as radial movement between the inner and out rings. It appears the instant claims are directed to the relative movement between the inner and out rings. Applicants' may consider further amendments to better describe the movements of slides into or out of the incubator.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lyle A Alexander
Primary Examiner
Art Unit 1743
